

TESTIMONY – MARCH 10, 2010 – TRANSPORTATION COMMITTEE

Presented by: Mechanical Contractors Association of CT (MCAC)

By: Joyce A. Wojtas

Bill No. –SB 413 – AAC Denial of Prequalification Certificates by Commissioner of DA

The Mechanical Contractors Association of Connecticut **supports the intent of SB 413** which would allow the DAS commissioner to deny a prequalification certificate to any contractor or substantial subcontractor for the reasons listed in Sec.1(i) of the bill. However, **Sec.1(i)(3) of the bill incorrectly states that denial will be for the contractor/substantial subcontractor “who has submitted to the commissioner, within the preceding three years, four or more written evaluations determined by the commissioner to be unsatisfactory.”** The evaluations are submitted by the people, public agencies, etc. that the contractor has a contract with and the language in Sec.1(i)(3) should read **“who, within the past three years, has received four or more unsatisfactory written evaluations.”** MCAC believes that this denial should take place only after the contractor or substantial subcontractor receives notice and an opportunity for an administrative hearing.

Questions have been asked “why four times?” Because of the categories covered in the evaluations (CGS Sec. 4a-101), the scoring system used by DAS, and the chances for mitigating circumstances and variables, MCAC feels that four bad evaluations is a fair number. In addition, the fact that not only state and municipal owner evaluations, but private owner evaluations will be included (amended to Sec. 3 (e) of this bill) all owners are not liable for what they list on the evaluation form, unless they are found by a court of competent jurisdiction to have acted in a willful, wanton or reckless manner. An owner may view something in an honest way and fill in an evaluation form that is very detrimental to the contractor or subcontractor in the evaluation rating but in the overall picture, it may not be detrimental to the construction project as a whole.

CGS Sec. 31-57c and 31-57d, which specifically provide for disqualification of contractors from bidding on DPW and DOT contracts for conviction of crimes, failure to perform according to the terms of the contract, a history of bad or unsatisfactory performance or willful violation of statutory/regulatory provisions, are referenced in the DAS Prequalification Law. In subsection (f) of these sections the commissioners of DPW and DOT have great flexibility when it comes to the disqualification of a contractor from bidding. Subsections (g) state, “the commissioner may grant an exception permitting a disqualified contractor to participate in a particular contract or subcontract upon a written determination by the head of the contract awarding agency that there is good cause, in the interest of the public, for such action.”

Although everyone agrees that the DAS rules must be tightened and that contractors with poor performance records should not have the opportunity to bid on state-funded public building contracts, we must keep in mind that a disqualification or a denial of prequalification not only takes away the livelihood of the contractor, it heavily impacts the people that the contractor employs. A key component to a good prequalification program that protects the taxpayers is communications among the state agency who pre-qualifies contractors and all other agencies and municipalities that put contracts out for bid.

For your information another bill on this matter (SB241) was heard by the Labor Committee on March 2. MCAC respectfully requests that you support this bill.

For questions or additional information contact:

Joyce A. Wojtas

jawojtas@myway.com or 860-280-4623